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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/777,079

02/13/2004

James R. Crapser

J-3894

4128

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EXAMINER

WILSON, GREGORY A

ART UNIT

PAPER NUMBER

3749

MAIL DATE

DELIVERY MODE

05/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/777,079	Applicant(s) CRAPSER, JAMES R.	
	Examiner Gregory A. Wilson	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15, 22 and 23 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-12 and 16-21 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/19/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments, filed 2/12/08, with respect to the rejection(s) of claim(s) 1-6, 8-11 and 13-23 under Hennart et al in view of Miller et al have been fully considered and are persuasive. It would not have been obvious to modify Hennart et al to include the nonporous capillary channel teaching of Miller et al since Hennart et al focuses on the importance of using porous wicks and that it is critical not to use an adsorbate. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Hennart et al with regard to claim 12, since the claim does not require the capillary member to be non-porous and as a sole reference anticipates the applicants invention. Additionally, a new grounds of rejection is made in view of Kotary et al (7,007,863).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by **Hennart et al (3,587,968)**. **Hennart et al** discloses an evaporative device in the form of an apparatus for diffusion of volatile liquids and includes a container (1) for holding a liquid (2), the container having an opening, a porous wick (8) (SEE column 4, lines 20-24) extending through the opening of the container such that a portion of the wick contacts the liquid held within the container and a portion of the wick is exposed to the environment (SEE Figures 1-3 and 10), where the wick transfers the liquid from the container, a cover (SEE Figure 7) that encases a portion of the wick extending out of container (1), an evaporator (capillary member) (9) extends around the wick radially outward and channels the liquid from the wick and disperses it to the environment, the capillary member can be grooved (ie: channels) or any other form suitable for allowing evaporation of a liquid (SEE column 4, lines 38-47).

Claims 1, 2, 4, 5, 8-12 and 16-21 are rejected under 35 U.S.C. 102(e) as being anticipated by **Kotary et al (7,007,863)**. **Kotary et al** discloses an evaporative device

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including a container (1) for holding a liquid and having an opening, a porous wick (3b, 3g) extending through the opening such that a portion of the wick contacts the liquid held within the container and a portion of the wick is exposed to the ambient environment wherein the wick transfers the liquid from the container (SEE column 4, lines 26-34), a capillary member (3a, 3h) having a surface in communication with a portion of the wick, the capillary member having a nonporous capillary channel extending from the wick (Figure 5B shows a capillary member 3h extending radially from wick portion 3g) or with regards to claim 21, the capillary member 3h has an insert for which the wick is placed within such that the nonporous capillary member is in communication with the wick. Figures 2C, 2D, and 3 show multiple capillary channels (Figures 2C and 2D show a V-shape) and column 5, lines 55-62 teach that the capillary member can be in a variety of shapes the only requirement is that the wicking sections be in contact with the liquid in the container (1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kotary et al (7,007,863) in view of Hennart et al (3,587,968)**. **Kotary et al** discloses the applicants primary inventive concept as stated above including the teaching in

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column 5, lines 55-62 that the capillary member can be in a variety of shapes the only requirement being that the wicking sections be in contact with the liquid in the bottle. Hennart et al teaches winged shaped capillary plate members as is known in the art. It would have been an obvious matter of design choice to modify the capillary members of Kotary et al to include the shape of a wing as taught by Hennart et al for the purpose of dispersing the fluid out into the environment by capillary action.

Allowable Subject Matter

Claims 15, 22 and 23 are allowed.

Claims 13 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory A. Wilson whose telephone number is (571)272-4882. The examiner can normally be reached on 7 am - 4:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory A. Wilson/
Primary Examiner, Art Unit 3749
May 12, 2008